IN THE COURT OF APPEALS OF IOWA

No. 0-061 / 98-1942
Filed February 23, 2000

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CLERK SUPREME COURT

IN THE INTEREST OF R.L.B., Minor Child,

T.C., Mother,

Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, District Associate Judge.

Mother appeals from the juvenile court order terminating her parental rights.

AFFIRMED.

Christopher A. Kragnes, Sr. of the Law Offices of Christopher A. Kragnes Sr., P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Gordon E. Allen, Deputy Attorney General, and Jon Anderson, Assistant County Attorney, for appellee-State.

Catherine K. Levine, Des Moines, guardian ad litem for minor child.

Heard by Mahan, P.J., and Zimmer, and Hecht, JJ.

ZIMMER, J.

Teri C. appeals from the juvenile court order terminating her parental rights to her son Randy B., Jr. We affirm.

Randy B., Jr. was born in August of 1988. His father is Randy B., Sr. and his mother is Teri C. Randy, Jr. has not lived with his parents since November of 1996. On June 5, 1997, Randy, Jr. was removed from the home of relatives who could no longer care for him. One week later Randy, Jr.'s parents signed a consent to the removal and he was placed with his great-grandmother. On July 30, 1997, he was adjudicated a child in need of assistance (CINA). He was then placed in the temporary custody of a foster family. Randy, Jr. was never returned to the custody of either parent and on June 11, 1998, the State filed a petition for termination of parental rights. Randy, Jr. was permitted to move to North Carolina with the foster family after the termination petition was filed. The termination hearing commenced on August 19, 1998, but Randy, Sr.'s attorney was not present. Another termination hearing with respect to Randy, Sr. was held on August 26, 1998.

Both parents have a history of substance abuse and incarceration. Randy, Sr. was in prison at the time of termination. He had not had any visits with the child and wrote only one letter to him in July of 1998. Randy, Sr. has not complied with any of the recommendations of the Iowa Department of Human Services. Teri has similarly had difficulty following through with services. She was just released from the Women's Residential Correctional Facility in Des Moines on April 27, 1998. She has not kept DHS informed of her address and she had not obtained employment by the time the termination hearing was held. Also at the time of the hearing, Teri was on probation on a charge of possession of a controlled substance with intent to

deliver. She did not visit Randy, Jr. until a few months before the termination hearing when she began weekly visits. These continued until he moved to North Carolina. She then had phone contact with him two or three times a week. She has failed to submit specimens for urinalysis since April of 1998, has failed to attend the recommended twelve-step meetings, and admitted to marijuana use as recently as July 2, 1998, approximately two months before the termination hearing. Teri continued to have difficulty maintaining a stable residence. Teri herself testified at the termination hearing that she was not financially ready to care for Randy, Jr. at that time. She stated she would be ready within two to six months.

On September 21, 1998, the juvenile court terminated Teri's and Randy, Sr.'s parental rights pursuant to Iowa Code sections 232.116(1)(d), (e) and (k) (1997). The juvenile court found it unrealistic, based on her history, that Teri would be ready to have Randy, Jr. back within two to six months. The juvenile court noted Randy, Jr. was doing well in his pre-adoptive home in North Carolina, describing it as a "secure and stable placement."

Only Teri appeals the termination of parental rights. She contends the juvenile court abused its discretion in failing to continue the termination hearing or suspend judgment pursuant to Iowa Code section 232.100. Alternatively, she argues her counsel was ineffective for failing to preserve error by making a motion for continuance or suspended judgment.

I. Scope of Review. We review proceedings to terminate parental rights de novo. *In re M.N.W.*, 577 N.W.2d 874, 875 (Iowa App. 1998).

II. Postponement of Termination. Teri contends she only needed a small amount of time to become ready to care for Randy, Jr. She testified she was willing

to drop urinalysis samples, had a residence, was "in line" for employment, and had left an abusive relationship.

We find no abuse of discretion in the juvenile court's failure to postpone termination of Teri's parental rights. At the close of a termination hearing, Iowa Code section 232.117(4) permits the juvenile court to enter an order pursuant to Iowa Code section 232.100. Section 232.100 provides that the juvenile court "*may* enter an order suspending judgment and continuing the proceedings subject to terms and conditions imposed to assure the proper care and protection of the child." The decision whether to suspend judgment is left to the juvenile court. *In re T.D.H.*, 344 N.W.2d 268, 271 (Iowa App. 1983). The juvenile court considered Teri's testimony asking for two to six months and stated: "The court finds that this time frame is unrealistic based on the history of this case. Teri agreed that she has made no effort to resume Randy's care since his removal." We agree. Randy, Jr. has been waiting for his parents for approximately two years and still Teri is not ready. Teri has not shown an ability to follow through with services and does not appear to have dealt with her substance abuse problems. Randy, Jr. was left in the care of relatives for long periods of time. As the juvenile court noted, patience with parents, beyond that required by statute, "can soon translate into intolerable hardship for their children." *See In re A.C.*, 415 N.W.2d 609, 613 (Iowa 1987). We affirm the termination of Teri's parental rights.

III. Ineffective Assistance of Counsel. Teri contends her trial counsel was ineffective for failing to request a continuance.

Trial counsel in terminations are generally governed by the same effectiveness standard used in criminal proceedings. *In re A.R.S.*, 480 N.W.2d 888,

891 (Iowa 1992) (citations omitted). In order to prevail on an ineffective assistance claim, a parent must show (1) counsel's performance was deficient, and (2) actual prejudice resulted. *Id.* (citations omitted). We afford trial attorneys a presumption that their conduct falls within the range of "reasonable professional competency." *Id.* (citation omitted). The burden of proving ineffectiveness is on the claimant. *Id.* (citation omitted).

Teri has failed to carry her burden. The issue of a continuance or suspension of judgment was put before the juvenile court automatically by statute and through trial counsel's questioning of Teri. The court considered and rejected the idea. As the State points out, the result would not have been different, even if counsel had made an explicit motion for continuance: Teri "had no job, no residence, no ability to remain drug-free and no compliance with the Court's orders made nearly a year before." Teri had nearly two years between the time Randy, Jr. was adjudicated CINA and the termination hearing to make the necessary changes in her life, but did not. Furthermore, she was not a good candidate for rehabilitation, so there is no reasonable probability the juvenile court would have granted her an additional six months, even if counsel had expressly asked for it. We affirm the juvenile court's decision to terminate Teri's parental rights.

AFFIRMED.